

## **EXHIBIT 3**

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

18 Cr. 183 (WHP)

5 NICHOLAS GENOVESE,

6 Defendant.

7 -----x

8 October 19, 2018  
9 12:50 p.m.

10 Before:

11 HON. WILLIAM H. PAULEY III,

12 District Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the  
17 Southern District of New York

BY: SAMSON A. ENZER

Assistant United States Attorney

18 HUGHES HUBBARD & REED, LLP

Attorney for Defendant

19 BY: EDWARD J.M. LITTLE

20 ALSO PRESENT: KRISTIN ALLAIN, Special Agent, FBI

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(Case called)

THE DEPUTY CLERK: Appearances.

MR. ENZER: Good afternoon, your Honor. Samson Enzer for the government, and with me at counsel table is Special Agent Kristin Allain for the FBI.

MR. LITTLE: Good afternoon, your Honor. Edward Little for the defendant Mr. Genovese.

THE COURT: Good afternoon to all counsel. I note the presence of Mr. Genovese at counsel table.

Mr. Enzer, what is the status of this matter?

MR. ENZER: The government understands that Mr. Genovese wishes to change his plea to guilty, pursuant to a plea agreement with the government under which he would plead guilty to Count One of the indictment.

THE COURT: Thank you, Mr. Enzer.

Mr. Little, is there an application from the defendant?

MR. LITTLE: Yes, there is, your Honor. Mr. Genovese would like to withdraw his prior plea of not guilty and enter a plea of guilty today.

THE COURT: Is this plea pursuant to a plea agreement?

MR. LITTLE: Yes, it is, your Honor.

THE COURT: The record should reflect that a plea agreement has been handed to me for inspection.

Mr. Little, prior to the commencement of this

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1 proceeding, did you review with your client an advice of rights  
2 form?

3 MR. LITTLE: Yes, I did, your Honor.

4 THE COURT: The record should reflect that an advice  
5 of rights form has been marked as Court Exhibit 1 and handed to  
6 me for inspection.

7 Did you observe the defendant sign the advice of  
8 rights form in your presence?

9 MR. LITTLE: Yes, your Honor. In addition, I reviewed  
10 the substance of it with him before he signed.

11 THE COURT: And you signed it as his attorney as well?

12 MR. LITTLE: I did, your Honor.

13 THE COURT: Very well.

14 At this time then I'm going to direct my deputy to  
15 administer the oath to Mr. Genovese.

16 THE DEPUTY CLERK: Please stand and raise your right  
17 hand.

18 (Defendant sworn)

19 THE COURT: Mr. Genovese, do you understand, sir, that  
20 you are now under oath and that if you answer any of my  
21 questions falsely, your false or untrue answers may later be  
22 used against you in another prosecution for perjury or making a  
23 false statement?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Very well. Gentlemen, you may be seated.

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1 For the record, Mr. Genovese, what is your full name?

2 THE DEFENDANT: Nicholas Joseph Genovese.

3 THE COURT: If you would pull the microphone closer?

4 Thank you, Mr. Little.

5 How old are you?

6 MR. LITTLE: 53.

7 THE COURT: How far did you go in school?

8 THE DEFENDANT: Two years into college.

9 THE COURT: Are you able to read, write, speak, and  
10 understand English?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are you now or have you recently been  
13 under the care of a doctor or a psychiatrist?

14 THE DEFENDANT: I have seen a doctor for my asthma.  
15 That's all.

16 THE COURT: Are you taking any prescribed medications?

17 THE DEFENDANT: Just an inhaler for my asthma.

18 THE COURT: Have you ever been treated or hospitalized  
19 for any mental illness or any type of addiction, including drug  
20 or alcohol addiction?

21 THE DEFENDANT: I wasn't hospitalized for drug  
22 addiction but I was using drugs.

23 THE COURT: And when was that, sir?

24 THE DEFENDANT: Probably 2013 on, until I was  
25 arrested.

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1 THE COURT: And, when you say you were hospitalized,  
2 were you in a treatment program?

3 THE DEFENDANT: Yes.

4 THE COURT: And did you complete that treatment  
5 program?

6 THE DEFENDANT: Yes.

7 THE COURT: And any other hospitalizations or  
8 treatments for mental illness or drug addiction?

9 THE DEFENDANT: No. Nothing at all.

10 THE COURT: In the past 24 hours, sir, have you taken  
11 any drugs, medicines, or pills, or have you consumed any  
12 alcohol?

13 THE DEFENDANT: Nothing.

14 THE COURT: Is your mind clear today?

15 THE DEFENDANT: Yes, it is.

16 THE COURT: Are you feeling all right today?

17 THE DEFENDANT: I feel fine. Thank you.

18 THE COURT: Are you represented by an attorney here  
19 today?

20 THE DEFENDANT: I am.

21 THE COURT: Who is your attorney?

22 THE DEFENDANT: Ed Little, sitting next to me.

23 THE COURT: Mr. Little, do you have any doubt as to  
24 your client's competence to plead at this time?

25 MR. LITTLE: I have no doubt, your Honor.

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1 THE COURT: Now, Mr. Genovese, your attorney has  
2 informed me that you wish to enter a plea of guilty. Do you  
3 wish to enter a plea of guilty?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you had a full opportunity to discuss  
6 your case with your attorney Mr. Little, and to discuss the  
7 consequences of entering a plea of guilty?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you satisfied with your attorney  
10 Mr. Little, and his representation of you in this matter?

11 THE DEFENDANT: Yes.

12 THE COURT: On the basis of Mr. Genovese's responses  
13 to my questions and my observations of his demeanor here in my  
14 courtroom this afternoon, I find that he is fully competent to  
15 enter an informed plea at this time.

16 Before I accept any plea from you, Mr. Genovese, I'm  
17 going to ask you certain questions. My questions are intended  
18 to satisfy me that you wish to plead guilty because you are  
19 guilty and that you fully understand the consequences of your  
20 plea. I am going to describe to you certain rights that you  
21 have under the Constitution and laws of the United States which  
22 rights you will be giving up if you enter a plea of guilty.  
23 Please, listen carefully. If you do not understand something I  
24 am saying or describing, then stop me and either I or your  
25 attorney will explain it to you more fully.

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Do you understand this?

THE DEFENDANT: Yes, sir.

THE COURT: Under the Constitution and laws of the United States you have a right to a speedy and public trial by a jury on the charges against you which are contained in the indictment.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And if there were a trial, you would be presumed innocent and the government would be required to prove you guilty by competent evidence and beyond a reasonable doubt. You would not have to prove that you were innocent at a trial.

Do you understand this?

THE DEFENDANT: Yes, sir.

THE COURT: If there were a trial, a jury composed of 12 people selected from this district would have to agree unanimously that you were guilty.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: If there were a trial, you would have the right to be represented by an attorney and if you could not afford one, an attorney would be provided to you free of cost.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: If there were a trial, Mr. Genovese, you



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1 would have the right to see and hear all of the witnesses  
2 against you and your attorney could cross-examine them. You  
3 would have the right to have your attorney object to the  
4 government's evidence and offer evidence on your behalf, if you  
5 so desired, and you would have the right to have subpoenas  
6 issued or other compulsory process used to compel witnesses to  
7 testify in your defense.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: If there were a trial, you would have the  
11 right to testify if you wanted to, but no one could force you  
12 to testify if you did not want to. Further, no inference or  
13 suggestion of guilt could be drawn if you chose not to testify  
14 at a trial.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand, sir, that by entering a  
18 plea of guilty today, you are giving up each and every one of  
19 the rights I have described, that you are waiving those rights,  
20 and that you will have no trial?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that you can change your  
23 mind right now and refuse to enter a plea of guilty?

24 THE DEFENDANT: Yes.

25 THE COURT: You do not have to enter this plea for any

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1 reason whatsoever. Do you understand this fully, Mr. Genovese?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: Mr. Genovese, have you received a copy of  
4 the indictment?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Have you read it?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have you discussed it with your attorney  
9 Mr. Little?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you waive my reading the indictment  
12 word-for-word here in open court?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand, Mr. Genovese, that  
15 Count One of the indictment charges you with committing  
16 securities fraud during the period from in or at least 2015,  
17 through at least on or about February 2, 2018, in violation of  
18 Title 17 of the United States Code, Sections 78j(b) and 78ff,  
19 Title 17 with the Code of Federal Regulations,  
20 Section 240.10b-5 and Title 18 of the Code, Section 2.

21 Do you understand that?

22 THE DEFENDANT: I do.

23 THE COURT: Do you understand that if you did not  
24 plead guilty, the government would have to prove each and every  
25 element of the charge by competent evidence in order to convict

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1 you?

2 THE DEFENDANT: I do.

3 THE COURT: Mr. Enzer, for the benefit of the court  
4 and the defendant, would you describe the essential elements of  
5 the securities fraud offense charged here?

6 MR. ENZER: Certainly, your Honor.

7 At a trial, the government would have to prove beyond  
8 a reasonable doubt, first, that in connection with the purchase  
9 or sale of a security, the defendant employed a device, scheme,  
10 or artifice to defraud; second, that the defendant acted  
11 willfully, knowingly, and with intent to defraud; and third,  
12 that the defendant knowingly used or caused to be used any  
13 means or instruments of communication in interstate commerce to  
14 further the fraud.

15 The government would also have to prove by a  
16 preponderance of the evidence that venue is appropriate in the  
17 Southern District of New York.

18 THE COURT: Thank you, Mr. Enzer.

19 Mr. Genovese, have you listened closely to Assistant  
20 United States Attorney Enzer as he has described the essential  
21 elements of the offense?

22 THE DEFENDANT: I did, yes.

23 THE COURT: Do you understand if you did not plead  
24 guilty, the government would be required to prove each and  
25 every part of those elements by competent evidence beyond a

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reasonable doubt in order to convict you at trial?

THE DEFENDANT: Yes.

THE COURT: Do you understand, sir, that the maximum possible penalty for the crime to which you are entering a plea of guilty is 20 years of imprisonment, followed by a maximum term of supervised release of three years, together with a maximum fine of \$5 million, and a \$100 mandatory special assessment?

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: By the way, supervised release means that you will be subject to monitoring when you are released from prison, the monitoring to be under terms and conditions which could lead to reimprisonment without a jury trial for all or part of the term of supervised release without credit for time served on post-release supervision if you violate the terms and conditions of supervised release.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you also understand that as part of your plea that you will be ordered to provide restitution in this case?

THE DEFENDANT: Yes, sir.

THE COURT: Do you further understand that under the terms of your agreement, that you are admitting the forfeiture

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1       allegations and agreeing to forfeit to the United States a sum  
2       of money equal to \$13,230,811 in currency representing proceeds  
3       of your criminal activity?

4               THE DEFENDANT:   Yes, sir.

5               THE COURT:   Together with other specific property  
6       including a Hacker-Craft Triple Cockpit Runabout bearing the  
7       name "Fin and Tonic" with a trailer, and another Hacker-Craft  
8       Triple Cockpit Runabout bearing the name "Chasing Alpha," both  
9       represented property that constitutes proceeds of the illegal  
10      gains you obtained from these offenses.

11              Do you understand that?

12              THE DEFENDANT:   Yes, sir.

13              THE COURT:   Now, are you a citizen of the United  
14      States?

15              THE DEFENDANT:   Yes, sir.

16              THE COURT:   Do you understand that if I accept your  
17      guilty plea and adjudge you guilty, that adjudication may  
18      deprive you of valuable civil rights such as the right to vote,  
19      the right to hold public office, to serve on a jury, or to  
20      possess any kind of firearm?

21              THE DEFENDANT:   Yes, sir.

22              THE COURT:   Have you talked with your attorney  
23      Mr. Little about the Sentencing Guidelines?

24              THE DEFENDANT:   Yes, sir.

25              THE COURT:   And, do you understand that this Court

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1 will not be able to determine your sentence until after a  
2 presentence report has been completed by the probation office  
3 and you and the government have had a chance to challenge any  
4 of the facts reported by the probation office?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you also understand that if you are  
7 sentenced to prison, parole has been abolished and you will not  
8 be released any earlier on parole?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand that if your attorney or  
11 anyone else has attempted to estimate or predict what your  
12 sentence will be, that their estimate or prediction could be  
13 wrong?

14 THE DEFENDANT: Yes.

15 THE COURT: No one, Mr. Genovese, not even your  
16 attorney or the government, can nor should give you any  
17 assurance of what your sentence will be. Your sentence cannot  
18 be determined until after the probation office report is  
19 completed and I have ruled on any challenges to the report and  
20 determined what sentence I believe is appropriate giving due  
21 regard to all the factors set forth in Section 3553(a).

22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you also fully understand that even if  
25 your sentence is different from what your attorney or anyone

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1 else told you it might be, or if it is different from what you  
2 expect, that you will still be bound to your guilty plea and  
3 you will not be allowed to withdraw your plea of guilty?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, at the start of this proceeding I was  
6 handed a plea agreement. Did you review this agreement?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And did you discuss this agreement with  
9 your attorney?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Did you sign this agreement?

12 THE DEFENDANT: Yes, I did.

13 THE COURT: Did you fully understand this agreement at  
14 the time that you signed it?

15 THE DEFENDANT: Yes, I did.

16 THE COURT: Does this agreement represent the total  
17 understanding among the government, your attorney, and you?

18 THE DEFENDANT: Yes.

19 THE COURT: Is everything about your plea and sentence  
20 contained in this agreement?

21 THE DEFENDANT: Yes.

22 THE COURT: Has anything been left out?

23 THE DEFENDANT: Not to my knowledge, no.

24 THE COURT: Has anyone offered you any inducements, or  
25 threatened you or forced you to plead guilty or to enter into

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1 the plea agreement?

2 THE DEFENDANT: No, sir.

3 THE COURT: Do you understand, sir, that under the  
4 terms of the plea agreement you are giving up your right to  
5 appeal or otherwise challenge your sentence if this Court  
6 sentences you within or below the stipulated guidelines range  
7 of 121 to 151 months of imprisonment?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you also understand that as part of  
10 this agreement you are authorizing the entry of a consent  
11 preliminary order of forfeiture as to specific properties and a  
12 money judgment?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that I'm completely free  
15 to disregard any position or recommendation by your attorney or  
16 by the government as to what your sentence will be, and that I  
17 have the ability to impose whatever sentence I believe is  
18 appropriate under the circumstances and you will have no right  
19 to withdraw your plea?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Little, do you know of any valid  
22 defense that would prevail at trial, or do you know of any  
23 reason why your client should not be permitted to plead guilty?

24 MR. LITTLE: I do not, your Honor.

25 THE COURT: Mr. Little, is there an adequate factual



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1 basis to support this plea of guilty?

2 MR. LITTLE: There is, your Honor.

3 THE COURT: Mr. Enzer, there adequate factual basis to  
4 support this plea of guilty?

5 MR. ENZER: Yes, your Honor.

6 THE COURT: Very well.

7 Mr. Genovese, please tell me what you did in  
8 connection with the securities fraud to which you are entering  
9 a plea of guilty.

10 THE DEFENDANT: I misrepresented my background in  
11 order to induce people to become my clients and invest in my  
12 fund.

13 THE COURT: When, sir, did you do that?

14 THE DEFENDANT: Possibly 2015. Around there.

15 THE COURT: And, over what period of time did you do  
16 that?

17 THE DEFENDANT: Two years.

18 THE COURT: Can you be a little more specific with me  
19 as to how you misrepresented your background in order to induce  
20 people to invest with you?

21 THE DEFENDANT: My employment experience and  
22 education.

23 THE COURT: What did you tell people?

24 THE DEFENDANT: I told people I worked for -- that I  
25 had worked for and gained experience from various firms, and I

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1 had told people that I had a higher education than what I  
2 actually have.

3 THE COURT: And, with respect to the firms you  
4 described, had you ever worked for those firms?

5 THE DEFENDANT: No, sir.

6 THE COURT: What firms in particular did you tell  
7 people you worked for?

8 THE DEFENDANT: Goldman Sachs and Bear Stearns.

9 THE COURT: When you made those representations, did  
10 you make those representations with the intent to induce people  
11 to invest with you?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And, what was the name of your investment  
14 vehicle?

15 THE DEFENDANT: It was called Willow Creek Advisors.

16 THE COURT: Did you understand, sir, that at that time  
17 what you were doing was wrong and illegal?

18 THE DEFENDANT: I assume. Yeah.

19 THE COURT: Is there any doubt in your mind that what  
20 you were doing was wrong and illegal?

21 THE DEFENDANT: Oh no. No doubt whatsoever.

22 THE COURT: Where were you, sir, when you were  
23 engaging in making these false statements to people?

24 THE DEFENDANT: In New York City.

25 THE COURT: What borough?

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1 THE DEFENDANT: Manhattan.

2 THE COURT: All right.

3 THE DEFENDANT: Sorry.

4 THE COURT: At this time, Mr. Enzer, would the  
5 government briefly summarize its evidence against the  
6 defendant?

7 MR. ENZER: Certainly, your Honor.

8 The government would introduce, at trial, testimony  
9 from victims who invested in Mr. Genovese's hedge fund Willow  
10 Creek Advisors and certain related entities, based on false  
11 statements that Mr. Genovese made about his background,  
12 professional experience, and credentials including false  
13 statements that he was related to the Genovese family that  
14 owned and created the Genovese drug store chain and sold it for  
15 many millions of dollars, and that he was an heir to the  
16 fortune, false statements that he had previous work experience  
17 at Goldman Sachs and Bear Stearns, and false statements about  
18 his educational credentials including false claims that he had  
19 earned an MBA from Dartmouth's Tucker School of Business, as  
20 well as testimony from victims about their investment in the  
21 funds and the ways in which they communicated with Mr. Genovese  
22 which included e-mails, cell phone communications, and other  
23 communications involving interstate communications.

24 Those victims would also testify about information  
25 that was omitted by Mr. Genovese in soliciting investments

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1 including omissions that they were not told that Mr. Genovese  
2 had a prior felony criminal record that included felony  
3 convictions for fraud-related offenses.

4 Second, there would be documents including documents  
5 such as solicitation materials given to investors that included  
6 various of the false representations that he made to solicit  
7 investments, communications such as e-mails, and cell phone  
8 text messages between him and various of his victims, bank  
9 records showing transactions in which investors put money with  
10 his fund, trading records in which he wasted some of those  
11 funds and other records showing how he spent some of the money.

12 That's not all of the evidence but it is just some of  
13 the highlights of the evidence the government would offer at  
14 trial. A more detailed discussion of that is set forth in the  
15 criminal complaint and indictment against Mr. Genovese, which  
16 we incorporate by reference.

17 THE COURT: Thank you, Mr. Enzer.

18 By the way, Mr. Genovese, as a result of the scheme  
19 and misrepresentations that you engaged in, how much money did  
20 you obtain from unsuspecting investors?

21 THE DEFENDANT: In total, I would say close to  
22 \$13 million.

23 THE COURT: If you would stand, sir?

24 MR. ENZER: Judge, one minute? I forgot. There are  
25 two things I would like to proffer for the record.

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1 THE COURT: Sure.

2 Gentlemen, you can be seated for a moment.

3 MR. ENZER: Sorry, Judge.

4 First, for the record, the government proffers that  
5 the investors, the victims who invested with this fund,  
6 purchased limited partnership interests in the fund which  
7 qualify as a security; and second, I already stated this in a  
8 summary of the government's evidence but the government  
9 proffers that we would be able to establish that the defendant  
10 transmitted some of his false statements through instruments of  
11 interstate communication.

12 THE COURT: Thank you, Mr. Enzer.

13 Once again, Mr. Genovese. Mr. Genovese, at this time,  
14 sir, how do you plead to the charge in Count One of committing  
15 securities fraud during the period from at least in or about  
16 2015, through at least on or about February 2, 2018 in  
17 violation of Title 17 of the United States Code, Sections  
18 78j(b) and 78ff, Title 17 of the Code of Federal Regulations,  
19 Section 240.10b-5, and Title 18 of the United States Code,  
20 Section 2; guilty or not guilty?

21 THE DEFENDANT: Guilty.

22 THE COURT: Are you pleading guilty because you are  
23 guilty?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you pleading guilty voluntarily and of

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1 your own free will?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Little, do you wish me to make any  
4 further inquiries of your client?

5 MR. LITTLE: No. Thank you, your Honor.

6 THE COURT: Mr. Enzer, does the government wish me to  
7 make any further inquiries of the defendant?

8 MR. ENZER: No, your Honor.

9 THE COURT: Mr. Genovese, because you acknowledge that  
10 you are guilty as charged in the indictment and because I find  
11 you know your rights and are waiving them knowingly and  
12 voluntarily, and because I find your plea is entered knowingly  
13 and voluntarily and is supported by an independent basis in  
14 fact containing each of the essential elements of the offense,  
15 I accept your guilty plea and adjudge you guilty of the  
16 securities fraud count to which you have just pleaded. You may  
17 be seated.

18 Now, the U.S. Probation Office will next prepare a  
19 presentence report to assist me in sentencing you. You will be  
20 interviewed by the probation office. It is important that the  
21 information that you give the probation officer be truthful and  
22 accurate because the report is important in my decision as to  
23 what your sentence will be. You, and your attorney, have a  
24 right and will have an opportunity to examine the report,  
25 challenge or comment upon it, and to speak on your behalf

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1 before sentencing. I am going to set this matter down for  
2 sentencing on February 15, 2019, at 2:00 p.m.

3 I am going to direct the government to promptly  
4 provide a prosecution case summary to the probation department  
5 and, Mr. Little, I am going to direct you to arrange promptly  
6 for an interview of your client with the probation office.

7 MR. LITTLE: Yes, your Honor.

8 THE COURT: Very well.

9 Are there any other matters that counsel wish to  
10 raise?

11 MR. LITTLE: No thank you, your Honor.

12 MR. ENZER: No thank you, your Honor.

13 THE COURT: This matter is concluded. Have a good  
14 afternoon. And I will be entering the order of forfeiture, the  
15 preliminary order pursuant to the parties' agreement.

16 MR. ENZER: Yes, your Honor.

17 o0o